

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**THEKLA BASHORE**  
Claimant

VS.

**CONAGRA FOODS**  
Self-Insured Respondent

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Docket No. 1,018,057

**ORDER**

Claimant requests review of the November 17, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

**ISSUES**

The ALJ denied claimant's request for medical treatment. In his Order, the ALJ specifically indicated he believed claimant was not a good witness and that the medical evidence did not support her allegation of a work accident.

The claimant requests review of this decision asserting that her testimony, along with Dr. Sergio Delgado's medical opinions, prove it is more probably true than not that claimant's work activities caused her neck injury. Claimant requests that the Board reverse the ALJ's Order and grant claimant's request for Dr. Delgado, or his referrals, to be appointed as the authorized treating physician.

Respondent urges the Board to affirm the ALJ's Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed by respondent and assigned to the position of pre-tuber. In connection with this job she was also required to work at a sink preparing casings to be

used in the pre-tubing process. Claimant maintains that she noticed neck pain beginning in March 2004 although she does not associate it with any particular activity.<sup>1</sup> At one point, claimant testified that her job required her to work with her head bent down for the entire shift.<sup>2</sup> At another point, she testified she performed her work below shoulder level.<sup>3</sup>

Claimant also testified that she notified the plant nurse in March 2004 about her neck pain, but did not relate it to any aspect of her job,<sup>4</sup> nor did she request to be sent to a doctor.<sup>5</sup> According to claimant, the nurse responded to this complaint by rubbing Bengay on claimant's neck.

The nurse, Dawn Lugo, admits claimant complained one time of neck pain but only in passing in the break room. Ms. Lugo testified she does not remember rubbing claimant's neck with Bengay and if she had, she would have noted it in her daily log.

Claimant continued working her normal job duties and received no treatment. Claimant was notified that she was accruing an excessive number of unexcused absences and was in danger of losing her job. Some of these absences were due to vehicle problems and according to claimant, other employees were permitted unexcused absences when faced with such problems. On June 23, 2004, claimant was terminated for excessive absences.

Claimant testified her firing came on the same date she filed a written claim for her neck injury. However, Claimant also testified she presented an incident report 2 days before her termination. This document was not produced at the preliminary hearing.

After leaving respondent's employ, claimant was evaluated by Dr. Brad Storm, the individual who was treating her for an earlier workers compensation injury. Dr. Storm noted her neck complaints but offered no treatment options. She was also evaluated by Dr. Sergio Delgado in August 2004. Dr. Delgado's report indicates that although claimant associates her neck complaints to her repetitive work activities, he expressly stated that he did not understand her job.<sup>6</sup> He offered treatment suggestions, but did not express any opinion that claimant's work actually caused her present need for treatment.

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<sup>1</sup> P.H. Trans. at 29.

<sup>2</sup> *Id.* at 12-13.

<sup>3</sup> *Id.* at 28.

<sup>4</sup> *Id.* at 30-31.

<sup>5</sup> *Id.* at 19.

<sup>6</sup> P.H. Trans., Ex. 2 at 2.

Following the preliminary hearing, at which claimant testified, the ALJ denied claimant's request. In explaining his ruling, the ALJ expressly indicated that claimant was not a "good witness, and the medical evidence did not support the allegation of a work accident."<sup>7</sup>

The Board has reviewed the transcript and exhibits offered by the parties and finds the ALJ's preliminary hearing should be affirmed. The Board finds that where there is conflicting testimony, as in this case, credibility of the witnesses is important. Here, the ALJ had the opportunity to personally observe the claimant and respondent's representative testify in person. In denying claimant's request for medical treatment, the ALJ apparently believed respondent's testimony over the claimant's testimony. In addition, he concluded the medical records were not supportive of the claimant's allegation that she was injured while at work. The Board concludes that some deference may be given to the ALJ's findings and conclusions because he was able to judge the witnesses' credibility by personally observing them testify.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated November 17, 2004, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January 2005.

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
Mark E. Kolich, Attorney for Self-Insured Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>7</sup> ALJ Order (Nov. 17, 2004).